

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 29 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1996)

MD Docket No. 96-84

**COMMENTS OF
DESTINEER CORP.**

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Destineer Corp. ("Destineer")^{1/} by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, respectfully submits its comments in response to the Commission's Notice in the captioned proceeding.^{2/}

I. Introductory Statement and Overview

By these comments, Destineer addresses a single change proposed in the referenced item: the Commission's proposal to create a CMRS Mobile Services category and to include two-way pagers in that category for regulatory fee collection purposes.

^{1/} Destineer is a wholly-owned subsidiary of Mobile Telecommunication Technologies Corp. ("Mtel"). Directly, through Destineer, and through another wholly-owned subsidiary, SkyTel Corp. ("SkyTel"), Mtel a wide range of high technology wireless communications services. SkyTel holds a common carrier nationwide paging license and multiple non-network paging licenses operating over frequency 931.4375 MHz on a nationwide basis. Destineer was awarded a pioneer's preference to operate an advanced nationwide wireless network in the narrowband Personal Communication Service ("PCS") and is currently the only nationwide narrowband PCS service provider. Accordingly, Mtel is well positioned to provide the Commission with informed comment in this proceeding.

^{2/} Notice of Proposed Rulemaking, in MD Docket No. 96-84, 61 Fed. Reg. 16432 (April 15, 1996) ("Notice"). In the Notice, the Commission requested that comments be filed by April 29, 1996, and that reply comments be filed by May 9, 1996. Accordingly, these comments are timely filed.

Notice, at para. 19. This proposal was intended to provide regulatory parity between similar services which were previously licensed as part of the Private Radio Services, Common Carrier Radio Services and the new Personal Communication Services. As demonstrated below, however, it achieves just the opposite result.

For the reasons set forth below, Destineer strongly opposes the inclusion of two-way paging units in the CMRS Mobile Services category and respectfully suggests that two-way paging units be included in a redesignated CMRS One-Way Paging Services category to be entitled "CMRS Messaging Services," or something to that effect, which would include both one-way and two-way paging services and other narrowband PCS services.^{3/}

**II. Two-Way Paging Is Wholly Different from
All Other Services Identified
as CMRS Mobile Services**

The Commission's list of services to be categorized as CMRS Mobile Services includes, with the exception of two-way paging, only broadband services that allow for the provision of instantaneous two-way interactive voice communication.^{4/} It

^{3/} In the Notice, at para. 19, the Commission provides that, in addition to two-way paging, CMRS Mobile Services will include the following: qualifying Business Radio Services, 220-222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90); Public Coast Stations (Part 80); Public Mobile Radio, Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services (Part 22). All of these services provide for real time interactive two-way voice communications.

^{4/} Destineer is licensed under Part 24 of the rules and is cognizant that no fees are proposed for Part 24 licensees. See, Notice, at App. F. Nevertheless, Destineer comments now,
(continued...)

appears that the Commission may have proposed to include two-way paging in this category out of a belief that there was a greater similarity between two-way paging and the rest of these services.

Narrowband PCS services are broadly defined to be a family of mobile and ancillary fixed radio communications services which could provide services to individuals and businesses and be integrated with a variety of competing networks, and which will include advanced voice paging, two-way acknowledgment paging, data messaging, and both one-way and two-way messaging and facsimile services.^{5/} In contrast, the Commission has expressed that broadband PCS services include the following specific kinds of PCS services and devices:

[A]dvanced forms of cellular telephone service, advanced digital cordless telephone service, portable facsimile services, wireless PBX services, and wireless local area network (LAN) services, among others.^{6/}

The Commission has stated that

[t]hese new services and devices can operate through the existing public switched network or through alternative local networks such as cable television systems. PCS also can exist independent of local wired networks, filling

^{4/} (...continued)

out of a genuine concern that two-way paging may now be mischaracterized and that such mischaracterization may later spread to Part 24 licensees. Destineer believes that such a process would be particularly inappropriate, since any two-way paging provided outside of Part 24 would be truly minimal.

^{5/} Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, First Report and Order, 8 FCC Rcd 7162, 7167 (1993).

^{6/} Second Report and Order, 8 FCC Rcd 7700, 7712 (1993).

gaps in existing communications services and creating new markets.

Id.

Destineer submits that the above definitions and examples promulgated by the Commission adequately demonstrate the distinction between two-way paging (a narrowband PCS service) and certain other services included in the CMRS Mobile Services category (that are broadband PCS). If there were any question regarding whether there are meaningful distinctions between the two services, the Commission resolved this when it addressed PCS generally. There the Commission determined not to restrict cellular eligibility for narrowband PCS, holding that the nature of narrowband PCS is sufficiently different from that of the services provided by cellular systems and LECs that any ability they might have to exert undue market power in restraint of trade will be negligible. First Report and Order, at 7167. In contrast, the eligibility of cellular carriers to provide broadband PCS service is restricted. See Section 24.804.

**III. Both the Commission and the Industry
Appreciate the Distinction between
Broadband and Narrowband Service.**

The distinctions between two-way paging (a narrowband PCS service) and other CMRS Mobile Services (that are broadband PCS services, or similar services) are considerable, both within the Commission and within the industry, and include the following:

- The Commission has consistently addressed separately narrowband PCS and broadband PCS in separate proceedings,

no doubt reflecting the different nature of the two services.^{7/}

- The Commission has always auctioned narrowband services separately from broadband, no doubt recognizing that there is no meaningful interrelationship between the frequencies allocated for the two services.
- The Commission itself has established separate staff to handle narrowband and broadband matters. Within the Commercial Wireless Division of the Commission's Wireless Telecommunications Bureau there is (a) a Broadband Branch and (b) a Narrowband Branch.
- The Commission's rules are organized so that broadband and narrowband services are addressed separately. See e.g., Part 24, where Subparts D and F address narrowband and where Subparts E and G govern broadband. See also Part 22, where Subpart E governs narrowband and Subparts F, G, and H govern broadband.
- Licensees who have stock that is publicly traded and who are narrowband (including paging) services identify as their most immediate competition other paging companies and narrowband providers, and identify broadband providers, including cellular, only as a less direct source of competition.^{8/}

IV. Conclusion

^{7/} The Commission issued the following decisions related to the implementation of rules governing narrowband PCS:

First Report and Order, 8 FCC Rcd 7612 (1993); Memorandum Opinion and Order, 9 FCC Rcd 1309 (1994); and Second Memorandum Opinion and Order, 9 FCC Rcd 4519 (1994).

Whereas the Commission also issued these separate decisions related to the implementation of rules governing broadband PCS:

Second Report and Order, 8 FCC Rcd 7700 (1993); Memorandum Opinion and Order, 9 FCC Rcd 4957 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd 4441 (1994); and Third Memorandum Opinion and Order, 9 FCC Rcd 6908 (1994).

^{8/} See e.g., the Form 10-K filings of Mtel, Mobilmedia Communications, Inc., and Arch Communications Group, Inc., each submitted March 31, 1995.

For all of the above reasons, Destineer urges the Commission not to include two-way paging in its CMRS Mobile Services category. Rather the Commission should redesignate the CMRS One-Way Paging Services category as CMRS Messaging Services category, or something to that effect, and include both one-way and two-way paging services.

The above change will further regulatory parity and will be wholly consistent with the practices of both the industry and the Commission in regulating narrowband services differently than broadband services, and not mixing up the two.

Respectfully submitted,

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